

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK
OCT -8 2009
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)
)
Appellee,)
)
v.)
)
JEREMY LEE NELSON,)
)
Appellant.)
_____)

2 CA-CR 2008-0419
DEPARTMENT B

MEMORANDUM DECISION
Not for Publication
Rule 111, Rules of
the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20073228

Honorable John F. Kelly, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Kent E. Cattani and Kathryn A. Damstra

Tucson
Attorneys for Appellee

David Alan Darby

Tucson
Attorney for Appellant

B R A M M E R, Judge.

¶1 Following a jury trial, Jeremy Lee Nelson was convicted of the unlawful use of a means of transportation in violation of A.R.S. § 13-1803. The trial court found he had two historical prior felony convictions and sentenced him to an enhanced, mitigated term of

four years' imprisonment. On appeal, he challenges the sufficiency of the evidence to support his conviction.

¶2 A conviction must be supported by “substantial evidence,” Rule 20(a), Ariz. R. Crim. P., which is “such proof that ‘reasonable persons could accept as adequate and sufficient to support a conclusion of defendant’s guilt beyond a reasonable doubt.’” *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990), quoting *State v. Jones*, 125 Ariz. 417, 419, 610 P.2d 51, 53 (1980). We will reverse a conviction based on a claim of insufficient evidence ““only where there is a complete absence of probative facts to support the conviction.”” *State v. Soto-Fong*, 187 Ariz. 186, 200, 928 P.2d 610, 624 (1996), quoting *State v. Scott*, 113 Ariz. 423, 424-25, 555 P.2d 1117, 1118-19 (1976). Evidence sufficient to support a conviction may be direct or circumstantial. *State v. Pena*, 209 Ariz. 503, ¶ 7, 104 P.3d 873, 875 (App. 2005).

¶3 “A person commits unlawful use of [a] means of transportation if, without intent permanently to deprive, the person . . . [k]nowingly takes unauthorized control over another person’s means of transportation.” A.R.S. § 13-1803(A)(1). Viewed in the light most favorable to sustaining the jury’s verdict, *State v. McCurdy*, 216 Ariz. 567, ¶ 14, 169 P.3d 931, 937 (App. 2007), the evidence established Nelson had towed the victim’s motorcycle from a gas station to another location without permission from either the victim or any employee of the gas station.

¶4 Relying on *State v. Hoag*, 165 Ariz. 215, 797 P.2d 1233 (App. 1990), Nelson contends this evidence was insufficient to support his conviction because there was no proof he had intended to use the motorcycle as a means of transportation. In *Hoag*, Division One

of this court addressed whether mere “trespassory conduct” constitutes “control” of a vehicle under § 13-1803. 165 Ariz. at 215, 797 P.2d at 1233. The court found it does not and held that one must “intend[] to use the means of transportation as such” in order to violate § 13-1803. *Id.* at 219, 797 P.2d at 1237. But *Hoag* is distinguishable from this case. There, the defendant had entered the vehicle with the apparent intent to steal something from inside; he did not take the vehicle or otherwise interfere with the owner’s possession of it. *Id.* at 215, 797 P.2d at 1233.

¶5 “Control” is statutorily defined as “act[ing] so as to exclude others from using their property except on the defendant’s own terms.” A.R.S. § 13-1801(A)(2). From the evidence presented, reasonable jurors could find Nelson had taken the motorcycle from where the victim had left it. A ledger found in Nelson’s tow truck showed towing and storage fees for the motorcycle, suggesting he had intended to require payment for its return. Sufficient evidence supported the jury’s verdict. Nelson’s conviction and sentence are affirmed.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

GARYE L. VÁSQUEZ, Judge